

If a customer provides an Exemption or Resale Certificate after a sale where tax was paid, the seller may file a claim for credit with the Department. See 86 Ill. Adm. Code 130.1501. (This is a GIL).

October 11, 2000

Dear Ms. Xxxxx:

This letter is in response to your letter dated September 28, 2000. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be found on the Department's Web site at [www.revenue.state.il.us/legalinformation/regs/part1200](http://www.revenue.state.il.us/legalinformation/regs/part1200).

In your letter, you have stated and made inquiry as follows:

Pursuant to our conversation, I am writing you to reiterate the circumstances regarding a claim for a refund of sales tax (both ST556 & ST1) by our customer COMPANY.

Our customer made the following purchases and sales tax was collected and paid by us to the Illinois Department of Revenue:

<u>DATE</u>	<u>EQUIPMENT</u>	<u>PURCHASE PRICE</u>	<u>TAX PAID</u>
09/08/98 -	Excavator & Loader	\$85,000.00	\$5,950.00 (ST1)
10/19/98 –	Truck Tractor	15,500.00	1,007.50(ST556)
10/19/98 –	Lowboy Trailer	11,500.00	747.50(ST556)
04/08/99 –	Lowboy Trailer	14,000.00	910.00(ST556)

At the time of the above sales, customer did not submit any documentation nor indicate that tax exemption would apply. In June of 1999, we received a letter requesting a refund of tax on the above from our customer citing they were a manufacturing plant. In December of 1999, we received a letter from their accountant stating exemption and supplying us with their IBT#. (Copies attached)

I spoke with Jim and Jerry in your Business Department and they both indicated that the customer's Tax Exemption Certificate was not issued until November 1, 1999 (after these purchases were made); and, because tax exemption is not retroactive, our customer was not entitled to a refund. I conveyed this to our customer.

We have now been served with a summons to appear in the circuit court before an arbitrator on October 17<sup>th</sup> @ 9:00 am. If the arbitrator finds for our customer, we would be liable for attorney's fees and costs. (Copies attached)

We are requesting something in writing from your office to substantiate our position. Your immediate attention is imperative. Thank you.

Machinery and equipment that are used primarily (over 50% of the time) in the manufacturing or assembling of tangible personal property for wholesale or retail sale or lease are exempt from Retailers' Occupation Tax. See the enclosed copy of 86 Ill. Adm. Code 130.330. The manufacturing process is the production of any article of tangible personal property, whether such article is a finished product or an article for use in the process of manufacturing or assembling a different article of tangible personal property, by procedures commonly regarded as manufacturing, processing, fabricating, or refining that changes some existing material or materials into a material with a different form, use, or name. These changes must result from the process in question and be substantial and significant.

Generally, the use of machinery or equipment to effect a direct and immediate physical change upon the tangible personal property to be sold will be considered to constitute an exempt use under the manufacturing machinery and equipment exemption. See Section 130.330(d)(3)(A). However, the use of machinery or equipment to store, convey, handle or transport materials or parts or sub-assemblies prior to their entrance into the production cycle or the use of machinery or equipment to store, convey, handle or transport finished articles of tangible personal property to be sold or leased after completion of the production cycle is not considered to be manufacturing. The use of machinery or equipment to transport work in process, or semifinished goods, between plants is also not considered manufacturing. See Section 130.330(d)(4)(C-E).

With regard to vehicles, only those vehicles that perform a qualifying manufacturing process may qualify as exempt manufacturing machinery or equipment. For example, ready-mix trucks generally qualify for the exemption because a manufacturing process occurs in them. However, garbage trucks do not perform a manufacturing process and therefore are not exempt from tax as manufacturing machinery and equipment. Generally, tractors and trailers do not qualify as manufacturing machinery or equipment. We are unable to make a specific determination regarding the limited facts set forth in your letter in the context of a General Information Letter. However, we urge you to apply the above principles.

When Illinois retailers make sales at retail, they must either charge tax or document an exemption. If a customer provides an exemption certificate after a sale where tax was paid, the seller may file a claim for credit with the Department as provided in the enclosed copy of 86 Ill. Adm. Code 130.1501. With regard to the manufacturing machinery and equipment exemption under the Retailers' Occupation Tax Act, the user of such machinery or equipment must prepare a certificate of exemption for the transaction and submit the certificate to the retailer. The Department has prescribed Form ST-587, Equipment Exemption Certificate, which is used to document the exemption. However, if the user has an active registration or resale number, that number may be given in lieu of the prescribed certificate. No credit shall be given the taxpayer, however, unless the taxpayer shows that it has borne the burden of the tax or has unconditionally repaid the amount of the tax to the customer from whom it was collected. Under Illinois sales tax laws, sellers are not required to repay the amount of tax to their customers and file claims for credit. Rather, it is a business matter between sellers and customers.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Gina Roccaforte  
Associate Counsel

GR:msk  
Enc.